

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

THOMAS T. on behalf of E.G.T., a minor,
on behalf of the Estate of MEGAN E. D-H.¹

5:21-cv-01225 (BKS/DEP)

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner of Social
Security,²

Defendant.

Appearances:

For Plaintiff:

Howard D. Olinsky
Christopher Milliman
Olinsky Law Group
250 South Clinton Street, Suite 210
Syracuse, NY 13202

For Defendant:

Carla B. Freedman, United States Attorney
Hugh Dun Rappaport, Special Assistant United States Attorney
Social Security Administration
Office of General Counsel
6401 Security Boulevard
Baltimore, MD 21235

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Megan E. D-H. filed this action under 42 U.S.C. §§ 405(g) and 1383(c)(3)

¹ The Court notes that Thomas T. has been substituted in place of the now-deceased original Plaintiff, Megan E.D-H., as Thomas T. represents the interests of Plaintiff's minor child, E.G.T., who would be entitled to any Social Security benefits posthumously awarded to Ms. E.D-H. (Dkt. Nos. 21–22). In accordance with the local practice of this Court, these names have been abbreviated to protect their privacy.

² Pursuant to Fed. R. Civ. P. 25(d), the current Acting Commissioner of Social Security, Kilolo Kijakazi, has been substituted in place of her predecessor, Commissioner Andrew Saul.

seeking review of a decision by the Commissioner of Social Security (the “Commissioner”) finding that Plaintiff was not disabled and thus ineligible for the disability insurance and supplement social security income benefits for which she applied. (Dkt. No. 1). This matter was referred to United States Magistrate Judge David E. Peebles for a Report and Recommendation. (Dkt. No. 4); N.D.N.Y. L.R. 72.3(d). On January 31, 2023, after reviewing the parties’ briefs and the Administrative Record, (Dkt. Nos. 10, 13–14), and holding oral argument, Magistrate Judge Peebles issued a Report and Recommendation recommending that the Commissioner’s decision be reversed and this matter be remanded to the Commissioner for further proceedings with a newly assigned Administrative Law Judge. (Dkt. No. 23). Magistrate Judge Peebles advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the Report and Recommendation, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 18). Neither party filed an objection to the Report and Recommendation.

As no objection to the Report and Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report and Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report and Recommendation for clear error and found none, the Court adopts the Report and Recommendation in its entirety.


For these reasons, it is hereby

ORDERED that Magistrate Judge Peebles’s Report and Recommendation (Dkt. No. 23) is **ADOPTED**; and it is further

ORDERED that this matter is **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner for further proceedings consistent with the Report and Recommendation.

IT IS SO ORDERED.

Dated: February 16, 2023


Brenda K. Sannes
Chief U.S. District Judge